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HEARINGS

Before The

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

UNITED STATES SENATE

HEARINGS ON S. 252 AND S. 253
CERRE AND AGT AMENDMENTS

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CLEAN AIR ACT AMENDMENTS

MONDAY, FEBRUARY 21, 1977

United States Senate,
Committee on Environment and
Public Works,
Washington, D. C.

The committee met at 10:20 a.m., pursuant to call, in room 4200, Dirksen Senate Office Building, Hon. Gary Hart, presiding.

Present: Senators Muskie, Gravel, Hart, Anderson, Moynihan, Domenici and Chafee.

Senator Hart: The committee will come to order.

We will begin these mark-up sessions on Clean Air legislation for 1977. This follows several days of hearings, both here in Washington in the last several weeks, as well as one day of hearings last week in Denver, and based on that record as well as the record made over the past two years, I think we are prepared to proceed to consider legislation where appropriate.

It is my understanding that the staff will present proposals in three broad areas: auto emission standards, non-degradation or stationary source emissions, as well as ozone pollution.

1 I think the best way to proceed is what we have done in
2 the past and with the leadership of Senator Mansfield that he, or
3 have the staff review section by section, probably line by
4 line, proposals which they have developed, based upon the request
5 which I have indicated probably beginning with the auto
6 emissions area moving to nondegradation, and then into the
7 ozone eventually.

8 What I think would facilitate this legislation is for each
9 individual on the committee or subcommittee to indicate areas
10 of concern to them, proposals that they wish considered, and
11 perhaps, except for the headlines on those proposals, reserve
12 debate until we go back through the legislation after it has
13 been fully explained by the staff.

14 In this way, I think we can flag the areas that members
15 have concern over and also identify the areas which would seem
16 at this point at least to be noncontroversial. That way we can
17 narrow down the debate, narrow down the discussions to those
18 areas where there will be some serious disagreement over the
19 language proposed.

20 Given those ground rules, I think we could proceed to have
21 the staff present its proposal in whatever orderly form seems
22 appropriate.

23 Mr. Billings- Thank you, Mr. Chairman.

24 The staff has prepared, consistent with earlier discussions,
25 an agenda which is the provisions of S. 343, the bill which the

Senate passed that year on this legislation, as well as the Conference Report on the subject of hearings. It seemed to the chairman of the subcommittee the most appropriate vehicle for expeditious action on the legislation would be last year's Senate passed bill. In order to prepare members for consideration of this legislation, the staff prepared a summary document which discussed the provisions of that legislation, as well as the issues raised by those provisions and the final disposition of it in the last Congress, which has been distributed to the members.

With that in mind, and with the agenda which you have before you, I will start down and, as I get into trouble, ask other members of the staff to bail me out, with a brief description of each of the issues.

Senator Hart. Before you begin, I want to make two comments that I neglected to make earlier, and that is first of all to welcome our new members: Senator Andersen and Senator Moynihan, and Senator Chafee.

I think you will find very quickly that this subcommittee is lively and relevant to a lot of things that are going on in the country. We invite you to jump in as you wish. The water is fine.

(Laughter)

Senator Donohue. That is questionable.

Senator Hart. Doubtless like a veteran.

1 I would also like to call the members' attention to a very
2 interesting editorial in this week's Business Week, the best
3 page, entitled "Keeping Autos Legal," and the editors of that
4 magazine recommend to us that we take a very firm line on auto
5 emission controls, specifically the following language:

6 "Congress should not relax the tougher emission control
7 requirements due to take effect in the 1975 model year."

8 I recommend that for your consideration.

9 Mr. Billings, Section 1 of the bill, Mr. Chairman,
10 entitled "Program Support Grants," under existing law the
11 Federal funds are cut off to States where the States fail to
12 maintain an adequate level of funding.

13 This provision would amend existing law to remove the
14 Federal cutoff where there was a reduction in State agency funds
15 as a result of a general economy measure.

16 In addition, no State under this provision would receive
17 less than one-half of one percent of the total annual
18 appropriations for program support grants.

19 Section 2, Area Identification, is a critical provision to
20 the entire Senate passed bill, because it is the process which
21 is triggered by this section on which is based any determination
22 in the future as to the kind of region, and thus the kind of
23 controls triggered under the Clean Air Act.

24 Under this provision the States would come up with a
25 description of each of the air quality control regions within

the State as to the current air quality and these regions would be classified as to whether they were limited by, or whether they were regions in which primary standards were exceeded or secondary standards were exceeded, or regions in which clean air was cleaner than the primary or secondary standards.

The importance of this section relates to the transportation control planning provision, to the non-attainment provision and to the nondegradation provision.

The initiative is on the part of the States. The information is based on available monitoring data and the presumption is in the absence of monitoring data that a region is cleaner than the air quality standards.

Senator Domenici. Mr. Chairman, as we go through this, I wonder if it would be practical to have Leon and the staff identify departures from last year's Senate bill or Conference Report, Conference bill, so that we who worked on that will have some idea of where we are thinking of some things different than we already have gone through.

Mr. Billings. Senator Domenici, at this point the staff will be discussing only the Senate passed bill on assumption that if there are to be any modifications made in that, that it will be at the initiative of the members.

The staff has no intention at this point to propose in this discussion any modifications of the Senate passed bill.

1 At some later point, there will be a couple of technical
2 suggestions the staff may make. But the impression of the
3 staff is that the members did a perfect job last year.

4 (Laughter)

5 Mr. Billings. And no change is required.

6 Senator Gravel. I think you are asking to bring it to our
7 attention when there is a compromise effect. I think that
8 would be valuable information. If he is not asking it, I am
9 asking it.

10 I think it would be valuable information that we know a
11 compromise took place or something happened.

12 Mr. Billings. In the Senate or conference?

13 Senator Gravel. In the conference.

14 Mr. Billings. You would also like a description of the
15 ultimate disposition of the position.

16 Senator Muskie. Mr. Chairman, might I point out what
17 appears to be the fact, that in the committee print that I have
18 is working from at the end of the discussion of the provisions
19 of Section 252, there is a discussion of the Conference Report
20 provisions that were added. So that would be an easy reference
21 to the totality of the Conference Report.

22 Senator Domenici. Thank you, Mr. Chairman.

23 Senator Muskie. Mr. Chairman, I could suggest one other
24 thing, that as we go through these sections unless a question
25 is raised by any member of the committee, that that section be

considered noncontroversial so that when we get through the staff description we will then focus on those sections as to which members have raised a question?

So if a member wants to identify any section as something that he would like to return to later, he ought to do so as we go through, so we can put aside, not permanently — you can return to any section any time, I assume — but put aside the noncontroversial provisions so when we get through this round we can then focus on those sections that the committee would like to discuss more thoroughly.

Senator Hart. That was certainly the thrust of my remarks earlier. I didn't specify it that clearly, but I think Senator Muskie is absolutely right.

I would also encourage the newer members of the subcommittee to raise questions where they may not understand having gone through the same experience two years ago, knowing how difficult it is to jump into a moving stream, particularly where we are so far down the road on this legislation, don't hesitate to ask questions if you don't understand.

Senator Moynihan. Mr. Chairman, it surely won't be taken that our failure to raise questions is the assertion that we do understand.

(Laughter)

Senator Hart. Perhaps we will offer a third category of objection, but no understanding.

(Laughter)

Senator Domenici. Mr. Chairman, I think we all recognize that there are a number of members on our side that have worked long and hard and, for some reason, they could not be here today.

I certainly don't know whether they would have objections. They are already aware of much of this. I would hope that we include in our understanding that they very well might have some objections and we will have time to raise those, but I couldn't raise them, or all of them today, because I haven't had an opportunity to discuss it with them.

Senator Hart. With all those understandings, let's proceed.

Mr. Billings. Section 4, Mr. Chairman --

Senator Muskie. How about 3?

Mr. Billings. Section 3: Cost of Technology, is a provision which was offered and adopted by Senator Bentzen last year, which merely requires that in the assessment of the technology available to meet emission limitations that the Administrator identify the economic implications of the various technological alternatives.

It is an information function only. That provision was not controversial and it was adopted by the conference.

Section 4: Information Documents, is a provision which is tied into the transportation control planning provision. It requires the Administrator, in consultation with other Federal

officials, to come up with information on the implications of
and the availability of various kinds of transportation control
techniques in order that the States and local governments may
be better able to develop transportation control plans which
meet community needs.

Again, that was an information only provision, and it was
not controversial and it was adopted by the conference.

Section 5: Implementation Provisions, amendments to
Section 110 of the Act, which is the operative provision of
the law relative to the development of State implementation
plans, there were two particular issues in controversy in that
section.

First, the question of whether or not smelters would be
required to use only continuous emission controls;

Secondly, the question of the extent to which the Federal
Government, as a result of air quality requirements become
involved in local land use control decisions.

On the first question the committee adopted an amendment
by Senator Domenici, which would have permitted the use of
supplemental controls by existing nonferrous smelters.

That provision was modified in a major way in the Conference
Committee to provide for two five-year extensions for existing
nonferrous smelters during which time those smelters could use
noncontinuous controls. It is a somewhat more complex provision
than was originally offered by Senator Domenici.

Senator Cramer. Before we leave this, Mr. Chairman, as the non-Senate speaker I do want to get ready for discussion, the committee or approved different from the conference because I was not satisfied the two voted. So I had some concern about that provision. I do not want to do it now. But I want the record to show that committee with our understanding this morning I will raise some thoughts and some ideas and have something ready on that one.

Senator Hart. When you say "the two", the two speakers Senator Cramer. No, just on the speakers of this. The way ours and the House's needed. Those two came out dissimilar to either the House or the Senate, at least in my opinion. I want to have another try at it.

Senator Maskie. The proposal different from the Senate provision?

Senator Cramer. I think I would be satisfied with the Senate provision. What I am worried about is we already know how the House handled it.

I want to think about some way to get ours perhaps done differently so we do not come out with the conference result, so we are not stuck with the conference result. But I do not know how to do that at this point, so we will have that ready for you, shortly.

Mr. Billings. The last one question, Mr. Chairman, involves the fulfillment of the 1970 plan. Are we not

1 station in order to achieve and maintain ambient air quality
2 standards adopt and enforce emission limitations, transportation
3 and land use controls. The land use control requirements
4 evoked considerable controversy in the committee and was
5 finally resolved by adoption of an amendment by Senator
6 Burdick which would have required that land use controls could
7 only be included in a state implementation plan where necessary
8 to comply with primary ambient air quality standards and then
9 only after consideration of energy, environmental and economic
10 impacts of such land use controls.

11 Senator Hart. Before we move on, some of our witnesses
12 before these hearings, and I believe last session, identified
13 the problem of industries using the intermittent control
14 systems or strategies and laying off the economic burden on
15 their own work force; that is to say, when plants were
16 shut down, to achieve compliance of the workers in that plant
17 or that industry went without pay or income and ultimately
18 were those who bore the economic burden for compliance.

19 It has been suggested that language be included, as
20 I think it was in last year's conference report, to cover
21 that and require that the state implementation plans prohibit
22 the loss of pay to workers as a result of the use of intermittent
23 control strategies.

24 That may be something that we will also want to discuss
25 when we come back to that later on. I just flag that as

1 in ways that we discussed.

2 Mr. Billings: Section 5, Mr. Chairman, is the
3 requirement to prevent significant deterioration. The history
4 of the significant deterioration provision goes back to the
5 1967 Air Quality Act in which the Congress adopted language
6 which required not only the air quality standards be
7 achieved but that also air quality for the purpose of the
8 Clean Air Act would be to protect and enhance air quality.

9 This resulted in early guidelines for the prevention
10 of significant deterioration which were subsequently dropped
11 by the Environmental Protection Agency and were subsequently
12 reinstated as a result of litigation which went to the Supreme
13 Court. The Environmental Protection Agency has adopted
14 regulations to prevent significant deterioration.

15 This committee last year agreed that a requirement
16 for the prevention of significant deterioration ought to be
17 a policy adopted by the Congress rather than that adopted
18 by rule-making and as a result of litigation and spent perhaps
19 as much time on this provision as any other in the legislation.

20 I will try to briefly summarize it.

21 I have doubts that that is possible, but I will try.
22 The essence of the agreement last year was that there ought
23 to be a single national standard to measure significant
24 deterioration of air quality in areas of the country in
25 which the air was cleaner than the national standard and

1 that that single national measure with respect to only two
2 pollutants, particulates and sulfur oxides, would be increments
3 of change in air quality, a measure of the addition of
4 air pollution which would be permitted in any clean air
5 region, so-called increments of air pollution.

6 That standard which was referred to us as Class 2
7 numbers and Class 2 regions would be uniformly applicable to
8 all clean air areas of the country. The committee then
9 further decided that there ought to be a special consideration
10 attached to areas of great national concern, national
11 parks, wilderness areas and so on and establish that there
12 ought to be a measure of change which was more restrictive
13 in the air quality impact in those areas from activities
14 inside and outside those areas so-called Class I numbers.

15 The enforcement mechanism under the provision was
16 a requirement that the states amend their implementation plans
17 to provide for the prevention of significant deterioration
18 in line with the statute, that any new source of pollution,
19 new major emitting facility, I should say, which was the
20 28 major source categories which the Senate had identified
21 as a result of extensive discussion with Senator McClure --
22 any of 28 major types of emitting facilities would be
23 required to obtain a permit and in that permit demonstrate
24 (a) that they would not exceed the Class 2 numbers; (b)
25 that with respect to any preserved or protected federal land

1 they would not exceed the Class I numbers; (c) that with
2 respect to their emissions from their plants that they would
3 meet the most available control technology, a demonstration
4 made on a case-by-case basis by the states but in no
5 event lower than national new source performance and
6 standards.

7 That is the essence of nondegradation.

8 Senator Gravel. I would have some amendments to propose
9 to that at a later time.

10 Mr. Brayman. Mr. Chairman, if I could just add an
11 addendum to that, in conference with the House the Senate
12 adopted or the Conference Committee adopted three classes
13 relevant, two classes of air pollution, a third category
14 that would allow industry, would be an industrial development
15 area in effect that had numbers that were less restrictive
16 than the Senate Class II numbers.

17 So that in the House bill which is also before the
18 committee you have three classes, I, the National Park
19 class, II, the general category, and third, the Class III
20 which the state on a case-by-case basis could set up for
21 encouraging industrial development in that area.

22 Senator Hart. Leon, you might by way of education
23 explain who makes the decision between Class I and Class II
24 in this proposal, procedurally. You get some decided on
25 that. You might expand a little bit.

Mr. Billings: The Class II regions were designated by the legislation as those areas in which air was cleaner than the national standards for particulates and sulfur oxides.

The Class I regions were designated by the statute, except that with the concurrence of Federal land managers, States could add additional Federal lands to the Class I areas.

With respect to lands which were not in the Federal domain any decision with respect to the protection of their air quality other than a Class II protection was solely a State decision.

Senator Hart. By any State agency?

Mr. Billings. By however the State wanted to do it. The theory of the Senate bill was that the Federal interest was to establish a basic national standard of nondegradation, to prevent significant deterioration.

That was the Class II numbers. And, beyond that, there was an interest in Federal lands which the Congress could legitimately assert for the protection of pristine quality.

One point I didn't make or many that I probably didn't was the question arises what happens when a large new source of pollution wants to locate somewhere within the vicinity of a protected national park or wilderness area? And that facility may exceed the Class I numbers.

There was a considerable discussion in the committee about that potential and it was finally resolved that where the source was able to demonstrate to the satisfaction of the

ac 2 1 Federal land manager that even exceeding those Class I values
2 the Class I numbers, there would be no interference with the
3 air quality values of the Class I area, then the Federal land
4 manager could approve that protected, and it could go ahead.

5 Of course, you could never exceed the Class II numbers but
6 it was in essence at variance with the burden on the permanent
7 applicant to demonstrate that the Class I values or that the
8 pollution would not exceed the air quality values of the park
9 or wilderness area.

10 Senator Hart. What is the difference between numbers and
11 values? You say even if it exceeded the numbers.

12 Mr. Billings. The numbers are arbitrary and the values
13 are subjective.

14 (Laughter)

15 Senator Hart. Between the two of them, it sounds pretty
16 loose.

17 Mr. Guard. Land related values for which the park was
18 established,

19 Senator Hart. There was some considerable discussion last
20 year, the last session, about buffer zones. Do you want to
21 comment on that concept?

22 Mr. Billings. There was a great deal of misinformation
23 circulated with respect to all of the proposals generated,
24 including the EPA proposals, that the existence of the Class I
25 numbers would establish a buffer zone anywhere from 50 to 100

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1 miles around any major national park or wilderness area in
2 which no development could take place.

3 A lot of the information was without respect to fact, if
4 you will.

5 The issue was dealt with in two ways: First, to the extent
6 that the permanent applicant was able to apply the limits of
7 technology, that application would affect the total emissions
8 and thus the potential impact and because technology is a
9 moving thing if the source wanted to be closer to a national
10 park or wilderness area, then the burden would be on that source
11 to develop and improve its technology.

12 But there is certainly nothing arbitrary within the
13 statute to limit that kind of movement.

14 Second, the Baker air quality values test provided an
15 additional lever whereby if the source could demonstrate that
16 there would be no adverse impact on air quality values, then,
17 too, it could be closer or further away from a park. But buffer
18 zones are a misnomer.

19 Senator Hart. The reason that I asked it, I don't know
20 about some of the other members, but certain maps were
21 circulating for the last two years in Colorado, showing that
22 the Western two-thirds of the State would be absolutely
23 prohibited from any kind of industrial development whatsoever,
24 as a result of that legislation and it was mislabeled as a
25 buffer zone piece of legislation of a no-growth sort. I think

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1 it is important for us to be aware of that when we get into
2 this section.

3 Senator Miksis. There was one other observation that
4 ought to be made with respect to those maps. They were drawn
5 around a committee print that was put together before the August
6 recess of 1975.

7 The committee had not embraced that committee print. It
8 did not represent a policy decision on the part of the committee,
9 but on the part of the opponents of the legislation, it was
10 described as a committee decision.

11 So the buffer zones that were sketched out on these maps
12 all related to that and to the best of my knowledge they were
13 never changed. Those maps that were based on a hypothetical
14 committee print were put forward as the effect of the committee
15 legislation a year ago and when the committee bill was markedly
16 different from the original.

17 Those who drew up the map were so entranced by the drama of
18 their presentation that they could never get themselves to
19 change it in order to respond to the facts.

20 I have often heard Senators accused of being guilty of kind
21 of rhetoric, but here is a dramatic demonstration of the use of
22 that kind of argument on the part of the opponents of the
23 legislation.

24 I suspect those maps are still being circulated as evidence
25 of the arbitrariness of this piece of legislation. But the fact

is that Class I areas. I think, cover less than one percent of the land area of this country and nobody would draw a buffer zone map around it, given the nature of this policy.

So I hope we are all reassured about that, but I think we put that map on display on the Senate floor.

Senator Hart. Yes.

We had discussion last year about inclusion of monuments and recreation areas above a certain size. I will probably raise that again when we come back to this section.

Mr. Billings. Mr. Chairman, Section 7: Extensions for Transportation Control Plans, is I suspect the second most complicated provision of the legislation.

The requirement for the development of transportation control plans arises out of the same provision which created the land use controversy. The fact that the environmental protection agency chose not to require the initiation of transportation control planning processes at an early date after the enactment of the Clean Air Act and awaited litigation to force an action combined with the fact that the auto emission problems is exacerbated by administrative and legislative delay and by deterioration of systems on cars, combined with the fact that the problem of pollution related to automobiles was probably more severe than the committee anticipated in 1970 gave rise to a series of plans for various areas of the country, the effects of which in the best description would

ac 6 1 have been draconian.

2 The issue of 101 percent gas rationing in Los Angeles was
3 the one that was often referred to.

4 It became apparent during the deliberations of the committee
5 in 1975 that the requirements with respect to transportation
6 control planning simply could not be achieved in the same kind
7 of time frame which were being discussed with respect to other
8 provisions of the legislation.

9 The committee, therefore, adopted a revised procedure with
10 respect to transportation control plans, the effect of which was
11 intended to be (1) transfer of much greater degree of responsi-
12 bility for the development of the plans to the local officials
13 who would have to be responsible for their implementation and
14 for their local political viability;

15 (2) To provide additional time in which to develop
16 transportation control planning processes;

17 (3) To provide for certain minimum considerations in
18 transportation control plans by statutory definition; and

19 (4) After the plans had been developed and had been
20 submitted, provide additional time for their implementation.

21 The provision I believe provided for two five-year
22 extensions from existing deadlines. The second five-year
23 extension only would be available where there was a full and
24 complete demonstration that all reasonable measures had been
25 provided, had been applied and that still the ambient air

ac 7 1 quality standards for the pollutants in question could not be
2 achieved.

3 There are issues in controversy with respect to transpor-
4 tation control planning, the most significant of which relates
5 to the question of sanctions.

6 The committee spent a good deal of time discussing the
7 extent to which there should be some leverage on governors and
8 local officials to initiate the planning process, to develop
9 the plans and then implement the plans that were developed.

10 A number of alternatives were considered relating sanctions
11 to Federal Highway Funds, and so on. But the committee finally
12 decided that the only reasonable and available sanction within
13 the jurisdiction of the subcommittee and within the jurisdic-
14 tion of the Environmental Protection Agency would relate to
15 those grants over which the Environmental Protection Agency had
16 sole control and adopted on that basis two levels of sanction.

17 Sanction number one related to whether or not a governor
18 of a State with a transportation control limited area applied
19 for an extension in the first place, and if he applied for an
20 extension, whether or not he submitted a revised plan.

21 None of those are substantive with respect to what the plan
22 contains. There are only two specific actions which the
23 governor must take; that is, apply for an extension of time in
24 order to prepare a plan; and submit a revised plan.

25 Failure to do either of those would require the

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1 Administrator of the Environmental Protection Agency to cut off
2 all EPA grants to that State, obviously, the suggestion that
3 water pollution grants were going to be cut off where air
4 pollution purposes created significant aggravation, and we have
5 heard about it since.

6 Secondly, the second level of sanction is where an
7 approved plan, an adopted plan is not being implemented in
8 which case the Administrator would be authorized or required
9 to reduce by 15 percent per year the Federal funds from the
10 Environmental Protection Agency to the region in question.

11 So one, the first sanction is the total sanction and it
12 is statewide;

13 The second sanction is a partial sanction and is regionally
14 oriented, but again both sanctions raise exactly the same level
15 of concern among State and local government groups and others
16 that the sanction for dirty air -- the way they put it is the
17 sanction for dirty air is a sanction for dirty water.

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Senator Gravel. I also have a problem with that.

Senator Moynihan. I would like to associate myself,

Mr. Chairman, with Senator Gravel and Mr. Cundage. There is a matter of judgment and concern for New York and particularly for New York City.

I have a set of maps here that the EPA has put out. Mr. Chairman, about the air quality control regions. There are five pollutants which are mapped here and only for one, nitrogen oxides, is the New York metropolitan region in compliance.

My colleagues to the north and west and east, rather, in Connecticut are not in compliance on any. So New York, New Jersey and Connecticut. This is not to be surprising. We are the first industrial region of the nation and we are old, but we are now in a lot of trouble.

New York City alone in the last seven years has lost 647,000 jobs. There are many States in the Union that don't have 647,000 jobs.

Senator Gravel. I know of one.

(Laughter.)

Senator Moynihan. This is a geologic compulsion for us. We do our best. We very much want to comply. I think it is the case that apart from the State of Maine, the State of New York has had more people involved in environmental movement perhaps than most. I mean it is where the leadership of such of these ideas have come from to support them.

1 And Business Week is published on 12th Street but how
2 much longer it will be is the question we all have. It seems
3 to me that if the punishment for dirty air is dirty water, the
4 government is going crazy, Mr. Chairman.

5 Senator Hart. The government has been known to go crazy
6 on occasion. So I take it you want to discuss that later on?

7 Senator Moynihan. Yes, sir.

8 Senator Hart. Senator Gravel as well.

9 Mr. Brayman. Mr. Chairman, if I could add an addendum to
10 this, this issue of transportation control plans relates to the
11 issue of nonattainment which Senator Moynihan brought up.

12 The concept or the expectation in the 1970 Act was that
13 through transportation controls and other controls, you would
14 attain clean ambient, healthy ambient air in 1977, this year.
15 The fact that that has not occurred because of the transporta-
16 tion control problems in relation to the hydrocarbon emissions
17 is largely the reason that later on we will be discussing the
18 nonattainment problem in areas like Houston where it is illegal
19 that this law prevents the construction of new facilities.

20 I just want to flag the fact that those two are inter-
21 related.

22 Senator Hart. There is one question -- under what section
23 is nonattainment?

24 Mr. Billings. 11.

25 Senator Hart. So you are saying 7 and 11 will occur, the

1 Discussion still overlap.

2 Senator Moynihan. I would like to speak about it, too.

3 Mr. Chairman.

4 Senator Domenici. Mr. Chairman, I missed Senator
5 Moynihan's discussion. I don't expect it to be done over
6 again, but principally are you concerned about nonattainment
7 at this point and its impact?

8 Senator Moynihan. In terms of the sanctions for nonattain-
9 ment, Senator, and it seems to us that there are different
10 levels of possibility for areas, particularly a city such as
11 New York which is in effect bankrupt. Some things you can't do,
12 but other things, in a sense, you can.

13 If we were to lose sewage support where we have got bonds
14 and can go ahead because we don't do air pollution, for which we
15 haven't got bonds and we cannot go ahead, then that makes no
16 sense. We want to be in compliance.

17 Senator Muskie. Could I just raise a question so that
18 the members could focus on it between now and the time we dis-
19 cuss this? Actually, Section 7 with respect to transportation
20 control represents a very watered down policy for dealing with
21 emissions from automobiles that aren't controlled by new cars.

22 If you take away all sanctions, about all that would be
23 left would be a pious hope. If we leave ourselves with this
24 pious hope, it might be better just to repeal the Clean Air
25 Act because otherwise, we will have sanctioned -- let me say

1 another word, we will have opened the door to abandonment of the
2 health standards because we cannot attain them.

3 If you are willing to surrender on the attainment of the
4 health standards, then as far as I am concerned, we might as
5 well repeal the Act and say it isn't doable. It won't work.
6 It is not easy.

7 I understand the crazy way this sounds to a lot of people,
8 but then you are trying to move a society into a direction that
9 means change in life-styles on the part of 200 million people
10 in all the varying circumstances in which they live, some of
11 the ideas you have to use look crazy at first.

12 So I want to raise that question. I don't think any of
13 us who were part of writing last year's bill are satisfied that
14 there are no crazy provisions in it; but we are dealing with a
15 lot of crazy circumstances. So I simply raise the question and
16 the new members can come up with new ways of moving this forward.
17 We would be delighted.

18 Senator Hart. I think as the automobile industry comes
19 closer to compliance with statutory standards, it becomes more
20 and more apparent that the remaining problem, which is still
21 sizable, relates to on-the-road vehicles in use and what devices
22 can be used to control the pollution there because their graphs
23 and charts still show, unfortunately, that performance goes to
24 get the longer the vehicle is on the road in terms of parking
25 or maintaining any standard.

Senator Gravel. I think there is every desire to have something more than just some wishful thinking here. But the sanction really in our mind is repressive and I think if we can -- I appreciate that we use this sanction so it would be within the domain of EPA.

I think certainly a more genuine sanction would be highway and I don't see why it has to be within the domain of EPA. We can just have a statutory provision here that if there is not compliance, then you suffer some percentage of highway funds. I think that would be a valid sanction and certainly would be more than wishful thinking.

Senator Muskie. I can hear the rural areas of Maine rising up. They have no air pollution problem. So they are being penalized. They do have a transportation problem. They are being penalized because their cities aren't complying. So it doesn't matter what sanctions you produce. It is going to hurt somebody and it may be hurting an innocent bystander.

Senator Gravel. All innocent bystanders are always hurt. But at least we would have one that would not cause dirty water, but would cause less roads. I think that could be certainly more in keeping with our goal.

Mr. Billings. Just for point of clarification, Mr. Chairman, the sanction, the major sanction, the cut off of all BOA grants does not go to failure to achieve the standard. It only goes to two procedural decisions on the part of the Board.

1 first, to apply for an extension and second, to submit a
2 plan. It doesn't go to whether that is a good plan or bad plan,
3 but we have got to submit a plan.

4 Senator Gravel: Take the State of Alaska, we have a problem
5 in Fairbanks. If Fairbanks cannot effect a plan satisfactory to
6 the community and to EPA, it means that Juneau and Anchorage
7 will suffer dirty water because of our inability of the unique
8 situation to have a plan. That doesn't make much sense to me.

9 I would rather that you cut off some Highway funds for the
10 State of Alaska than cut off our water funds.

11 Mr. Billings. I repeat, it is only the submission of the
12 plan. The sanction only goes to where the State has not done
13 the minimum job it is supposed to do, that is, request the
14 extension and submit the plan.

15 The second level of sanction goes where the provisions of
16 the approved plan are not being implemented. That may get
17 closer to the problem that you have where you begin to chase
18 down the Federal funds.

19 Senator Gravel. If we just file a phony plan, that
20 obviously is unenforceable, we will come to the head of the
21 matter very quickly and then you will be in the situation where
22 you have to cut off water funds. If it is just a question of
23 submitting a piece of paper, we could do that.

24 Mr. Billings. That is why the second sanction is important.

25 Senator Gravel. No question. I think we should have the

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File of

1 second sanction. I am saying we shouldn't penalize clean
2 water in the process, that we can penalize roads, and that is
3 more germane.

4 Senator Hart. The comments I think have highlighted the
5 problem. We will be coming back to you. Thank you.

6 Senator Domenici. Mr. Chairman, I don't want to belabor
7 the point, but the principal criticism has been that new sources
8 are excluded and EPA's -- was it late December when they came
9 up of '76 with their trade-off policy?

10 That is about right. Would that remove the ban on new
11 sources? But the EPA bill, policy, has something in it that is
12 not in the Senate bill because under the Senate bill the base
13 line for calculating the trade-off, as I understand it, is the
14 existing emissions if in compliance or conformance with an SIP.
15 Isn't that correct?

16 And under the EPA's policy they have used another word in
17 there, and they say an adequate SIP.

18 Mr. Billings. We are talking now about Section 11, not
19 Section 7?

20 Senator Domenici. Yes, but they are related in the sense
21 that the principal motivation behind the transportation planning
22 is ultimately attainment, and to the extent that mobile sources
23 contribute, we have got a transportation planning part of this
24 Act in there.

25 It seems to me the EPA may be saying that they are

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1 expecting SIP's, for States to go take a look at them and see
2 if they are adequate.

3 I think the real strong question maybe are SIP's, how
4 relevant are they at this point in time?

5 Mr. Cummings. I think right now there is a process of
6 revision of all the SIP's in areas which do not attain one or
7 another of the ambient standards.

8 The reference to adequate State implementation plans in
9 the EPA regs of last December is to approve revision under the
10 process through which they are now going and a lot of the
11 people who have commented on the inadequacies of the EPA Regs
12 and the existing provision in the bill for non-attainment areas
13 have pointed out that they don't know yet what new requirements
14 will be placed on the sources, what new emission limitations in
15 these revisions of the SIP's.

16 So they don't know whether there is going to be any room
17 for trade-off.

18 Senator Domenici. I will make this one last comment. I
19 don't like sanctions of the type we are discussing even though
20 Leon makes the point that it is the only filing of the plan and
21 the other condition.

22 Obviously, they could be, most of the plans are going to
23 be inadequate because nobody knows how to give you a plan that
24 is going to adequately describe the accomplishment that we
25 wanted.

1 I agree with our chairman, Senator Hart, that one area we
2 went over rather quickly that may be the only viable trade-off
3 in the whole thing, is an inspection and maintenance program
4 for vehicles in the field. That would provide significant
5 latitude, as I see it, if that was ongoing for squeezing down
6 and perhaps give some latitude for the stationary sources which
7 I understand is 11, not 7, but I think we have to address that
8 issue.

9 Thank you, Mr. Chairman.

10 Mr. Billings. The conference agreement last year, as you
11 know, did include an inspection, specific inspection and
12 maintenance requirement which is not on this agenda. But there
13 is some language to look at if the committee wants to look at
14 it.

15 Senator Hart. Obviously we will be coming back to this.
16 Let me ask an unrelated question about a section where a
17 question of mine will occur.

18 That has to do with background particulates. What is the
19 appropriate section there? Would that have been 6?

20 Mr. Billings. It arose originally, I think, in the
21 discussion of the significant deterioration.

22 Senator Hart. Let me flag the issue, since I failed to
23 then. During our hearings in Denver last week one of the major
24 industrial corporations out there claimed that the EPA is not
25 taking into consideration natural particulates, dust, and so

ac 4 1 forth. In its calculations and whether that industry is
2 compliance and cites a statement made by Senator Muskie about
3 our reliance on the EPA's -- I don't remember the phrase that
4 is used, but their good judgment and their sound judgment in
5 assessing natural particulates in the air as a result of
6 natural conditions.

7 They claim, and they make a very good superficial case
8 that that good judgment is not being exercised, that they are
9 being charged for all the background particulates.

10 This is something that I will want to look into, whether
11 that section is 6, or whatever.

12 Mr. Billings. We will be prepared to discuss that.

13 Senator Domenici. All we have on that issue is the
14 exchange between Senator Muskie and I on that issue on the floor.

15 Mr. Billings. And the reference in the committee report.
16 But we are prepared to explain it in some more detail.

17 Senator Hart. It seems that that didn't come out right
18 somehow.

19 Mr. Braithwaite. An additional piece of information on
20 that is that EPA just recently published proposed regulations
21 on the fugitive dust natural background question and comments
22 are not coming in on those.

23 I am not sure that all of the witnesses were up on those
24 regulations. I just recently discovered those. We will need
25 to get current on those and bring that up when we talk about

1 that.

2 Senator Muskie. Of course, there is this point.

3 Natural conditions may impose constraints, but, nevertheless,
4 ought not to be allowed to raise or modify health standards.
5 The question is whether or not they ought to result in modifica-
6 tion of welfare standards is no question, but it is clear that
7 in mountainous terrain the health standard imposes greater
8 pressures upon development or greater restraints upon develop-
9 ment than in plains areas.

10 I would think the same could be true of background levels
11 of pollutants. They impose constraints, but if we assume that
12 level X is the level at which, above which you ought not to
13 allow pollutants to rise in the interest of health, the question
14 is should you raise your figure because there are background
15 levels?

16 Isn't health going to be as impacted by the contribution
17 made by background levels to the pollutant concentration in the
18 area as it is if the pollutant levels were all man-made?

19 The levels of the air quality standards that are set are
20 related to a judgment as to health. The question is whether you
21 are going to raise those numbers because some part of the
22 contribution is background levels of pollutants or the terrain?

23 Each narrow the margin within which economic growth can
24 take place in the areas that are afflicted by mountainous
25 terrain or background levels. It is a tough problem, or could

1 be a tough problem.

2 Senator Hart. My understanding is that the record on the
3 health impact of particulates is not as good as it should be
4 and that in fact the amount of scientific evidence available is
5 still in doubt.

6 I may be wrong on that. Also, the question we got into
7 in Denver on the whole area of the size of the particulates and
8 the impact they have on health.

9 Mr. Billings. The issue is respirability, whatever the
10 source, whether it be naturally occurring or fugitive emissions
11 from coke plants or the by-products of gases returning the
12 particulates to the atmosphere.

13 If they are of arrestable size is when they are of
14 concern, because that is where the health problem arises. The
15 Senator is correct, there has been inadequate attention paid to
16 the difference of the size of the particulates.

17 EPA does have the authority within the Section 108 and
18 Section 109, the air quality standards process, to make that
19 kind of distinction. There is no reason that they could not
20 establish the particulate standard based on respirability.

21 One of the proposals in the House bill, I believe, was to
22 direct EPA to establish a standard for fine particulate, to
23 establish a particulate standard based on the respirable sizes
24 of particulates.

25 Senator Hart. Was there a deadline for that study?

Mr. Billings. I think so. We can go back and check it
so when you take this up, we can take a look. That would
certainly eat away the administrative discretion of continuing
not to deal with the issue to the extent that that is a problem.

Senator Hart. Let's mark that as an area of discussion
we will come back to. We will go on to Section 8.

Mr. Billings. It would rise in 6. It might even rise
earlier.

Perhaps, Mr. Chairman, the best thing to do would be to
add that as an item on the agenda, because it relates to some-
thing more than just significant deterioration.

Senator Hart. If you would do that.

Mr. Billings. On Section 8: Hazardous Emission Design
Standards, the committee last year agreed to a noncontroversial
provision, the effect of which would be to permit the
Administrator for certain kind of pollutants to establish design
rather than emission standards where he determined that either
the method by which that pollutant got into the ambient air
or the preferable control strategy suggested the need to have
this alternative.

Particular attention was paid to asbestos, which is sprayed
in the environment. The provision is noncontroversial. It was
adopted in very similar form by the conference.

The next two sections, Section 9 and 9(b) on the agenda,
Delayed Compliance Orders; Delayed Compliance Penalty. Delayed

1 compliance orders provision was adopted by the committee in
2 recognition of the fact that the 1970 Clean Air Act had set
3 precise deadlines for the achievement of the requirements of
4 applicable State Implementation plans, including emission
5 limitations, and that for a variety of reasons good and bad
6 faith reasons, certain facilities would not reach those dead-
7 lines, but there was no provision in the 1970 Clean Air Act to
8 provide for extensions beyond 1977.

9 In fact, the Environmental Protection Agency in a move
10 which the staff views as illegal was negotiating delayed
11 compliance agreements with individual polluters well off into
12 the next decade.

13 The committee decided to sanction a policy for the issuance
14 of the delayed compliance orders and establish a new deadline of
15 January 1, 1979; a process which was to be primarily handled
16 by the States.

17 The second question which arose was the issue of how to
18 deal with the inherent economic advantage which accrued to a
19 source which through its delay had bought more time and, thus,
20 saved money as compared to the source which had moved quickly
21 to get into compliance by the deadlines established in the Act.

22 In order to deal with that problem the committee adopted
23 a concept entitled "Delayed Compliance Penalty." the effect of
24 which was to establish any time after January 1, 1979, a
25 penalty equivalent to the value of noncompliance, the economic

value of noncompliance, taking into account the cost of the technology, the cost of operating and maintaining that technology, the debt service on that technology, and so on.

Interestingly enough, while there was a fairly significant provision, there was little comment on it, the primary concern expressed by most were those sources which had negotiated themselves out a very good deal to the mid-80's who were concerned by the fact that the committee established a new cutoff time, and then had the delayed compliance penalty triggered thereafter.

This was adopted in a modified form by the conference and at some point in these discussions the staff may recommend because of improvements that were made in the conference in this provision that the committee consider a couple of changes which reflect the conference agreement.

Senator Hart. Can you quantify this for us in terms of the number of plants or industries around the country?

Mr. Billings. The Environmental Protection Agency estimates that there are 20,000 major emitters in the United States of which about 1,600 to 2,000 are not in compliance either with the applicable emission limitation or the compliance schedule established in the State Implementation Plan.

Senator Hart. How many of those are paying penalties?

Mr. Billings. Now? Zero.

Senator Hart. This was in the bill. I see.

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1 Mr. Billings. That is right. One of the reasons -- by
2 the way, in addition to this particular set of provisions, the
3 committee also adopted a civil penalty requirement, provision
4 which permits the Administrator to go after civil penalties.

5 One of the reasons that there has been --

6 Senator Muskie. That is Section 10.

7 Mr. Billings. Section 10. There have been two major
8 reasons why, aside from my political reasons, the Administration
9 has not sought enforcement action against polluters out of
10 compliance.

11 One is the only sanctions available in the Act are
12 criminal sanctions and they were reluctant to seek criminal
13 sanctions against polluters out of compliance.

14 The second is while the Administrator of the Environmental
15 Protection Agency and his agents have the authority to estab-
16 lish an implementation plan, an emission limitation and a
17 compliance schedule, they have absolutely no authority to
18 enforce those compliance schedules.

19 All of that must come through the U.S. Attorneys and the
20 Assistant Attorney General for natural sources. This means
21 while we have a uniform application in national policy in the
22 form of the Clean Air Act, the Environmental Protection Agency
23 is totally reliant on the individual views of 50, 60 District
24 Attorneys, U.S. Attorneys as to whether or not there is any
25 enforcement beyond which is established.

sc 11 1 This is also the reason you get so much negotiated consent
2 agreements between EPA and the polluters because they have no
3 other way to proceed in the absence of support from the U.S.
4 Attorneys.

5 In some places, the U.S. Attorneys have been aggressive.
6 In other places they have just closed their eyes and said they
7 had other cases on the agenda and that they weren't going to
8 pursue enforcement of this Act.

9 Again you have a significant rise in discrimination as
10 between regions depending on the views of the U.S. Attorneys.

11 Senator Hart. Is it contemplated under this provision
12 that the 1,600 to 2,000 companies not in compliance, polluters
13 not in compliance, would all be paying penalties?

14 Mr. Billings. Not necessarily because certain ones you
15 move the date to January 1, 1979. How many of them will get
16 into compliance in a natural course?

17 It is equally not certain how many when they see the
18 delayed compliance penalty coming down the line might decide
19 that it is time to quit delaying and move.

20 Senator Hart. But those not in compliance by the deadline
21 would then pay a penalty.

22 Mr. Billings. Yes.

23 Mr. Brayman. There is the one exception to that, Mr.
24 Chairman. There is a provision that you can get up to a two-
25 year extension for innovative technology beyond 1979 so that

ed 11
1 you can go to the State, the EPA, and say we are going to put
2 in innovative technology that is going to control pollution at
3 the end point better than it has ever been controlled for our
4 industry before.

5 If EPA agrees with you, in effect you can get until 1981
6 to bring that plant into compliance. That is a narrow window
7 but it is a window.

8 Senator Hart. EPA defines what is innovative?

9 Mr. Brayman. EPA and the State.

10 Mr. Billings. The source would have to come in and show
11 it is innovative and achieve a greater reduction than required
12 by the implementation.

13 Senator Hart. That is the standard significantly greater?

14 Mr. Brayman. Yes, I believe it is also significantly
15 cheaper also.

16 Mr. Billings. As long as you are talking about exceptions,
17 these coal converters, the penalty would not be triggered on
18 coal converters until January 1, 1980, in order to provide
19 them for the time necessary to get their emission control
20 devices in because they are people who didn't know what their
21 new emission limitation was going to be until much later in the
22 game than those that were subject to the initial Clean Air Act.

23 Senator Domenici. Mr. Chairman, might I ask this question?
24 I don't know that it has any bearing on our result. But it is
25 true that of about the 2,000 that are not in compliance that

we are really talking about very basic American industry, steel, refineries, major utilities, and copper.

Mr. Billings. Swelters.

Senator Domenici. I only raise that because we are in an economic crunch at the same time as it applies almost to those particular industries, save except nonferrous, which is in just a depressed market, but steel is having a tough time price-wise, refinery capacity is a major American problem at this point.

I just think as we look at that we ought to understand that it doesn't have serious application in some of our States, but to the nation it does.

The other point I want to raise, the innovative technology section that Senator Buckley proposed and that we put in our bill in my opinion has serious shortcomings because it applies only to technology that you are going, innovative technology that you are going to apply to existing facilities to clean them up.

I would submit, Mr. Chairman, as we move through this that there is justification for broadening it, to include innovative technology, to be applied to new sources which the conference agreed to and we did not.

I will go into it in more detail, but it is almost penalizing the wrong, we are saying to those in existence we will give you some latitude, but when we have brand-new technology being

1 applied to a new source, they frequently cannot comply in the
2 short period of time required.

3 We are thwarting new technology of an extreme long term
4 benefit to the nation by not having something in that. I will
5 present that to the committee in due course.

6 Senator Hart. Let me say in response to the economic
7 crunch, that the controversy this committee has always been
8 involved in is the degree to which we should be in the business
9 of relaxing air quality standards, public health standards, to
10 achieve certain economic results or whether there are better
11 instruments in our, better arrows in our quiver to take care
12 of the economic problems.

13 Senator Domenici. I don't disagree that that has been the
14 balancing factor.

15 Senator Hart. Section 9?

16 Mr. Billings. I tried to cover 9, 9(b) and 10 in that
17 discussion.

18 Senator Hart. Eleven.

19 Mr. Billings. Eleven is the only other controversial
20 provision in the bill.

21 (Laughter)

22 Senator Hart. I can't believe that.

23 Mr. Billings. I can try.

24 Section 11 is the -- what was euphemistically referred to
25 in the last Congress as the steel industry amendment, primarily

1 because not too many other industries had focused on the
2 problem of expansion in those areas in which national ambient
3 air quality standards would not be achieved by the deadline and
4 the implications that the limitations of the Clean Air Act
5 posed for new growth.

6 The amendment in question, Section 11, applies to existing
7 facilities in areas in which the primary standards are not
8 going to be achieved and it provides that under very limited
9 and precise circumstances those existing facilities may expand
10 so as to add new facilities or replace existing facilities so
11 long as they use the best available control technology, so
12 long as the facilities in question are in compliance with
13 applicable emission limitations, the existing facilities are
14 in compliance with emission limitations, and so long as there
15 is reasonable further progress towards the goal of achieving
16 the primary ambient air quality standards.

17 Mr. Chairman, Senator Randolph has asked to have this
18 issue reserved. I know Senator Bentsen and others have questions
19 about it. I see no value in discussing it at any great length
20 at this point.

21 Senator Hart. It will be an item for considerable
22 discussion.

23 Mr. Billings. Sections 12 and 13 are cosmetic. Section 12
24 reduces a multi-page provision of the bill relative to inter-
25 national pollutant abatement to a description of what the

committee introduced.

Section 13 abolishes the President's Air Quality Advisory Board, which has already been done by administrative Decree.

Section 14 is an important provision of the bill. It is intended to clarify the original intent of Congress in 1970 in the Air Act which was confirmed in the 1972 Water Act, that Federal agencies be required to comply with applicable provisions of State implementation plans, the same as any other private or citizen source of pollution.

It is a provision which this committee adopted without controversy and which the conference adopted, I think, as the Senate bill virtually.

Section 15 is the Coal Conversion Amendments. These amendments do two things: One, they revise slightly the provisions of the Energy Supply and Environmental Coordination Act of 1974 with respect to coal conversion in that they provide until January 1, 1980, for compliance with coal zone conversion orders.

They also provide that in essence coal conversion must become a part of the overall Federal State rubric of the Clean Air Act and thus subject to State authority under Section 110.

Is there anything else you want to say about that? As far as I know, there is no controversy on these. They are an area in which, if there is any controversy, Senator Randolph would want to address.

20 17 1 When there is ozone.

2 Bayan Whiteside of the staff is going to summarize the
3 ozone provision for the members.

4 Senator Domenici. Is that relevant anymore?

5 Mr. Whiteside. I think that is the major question to ask
6 about ozone right now. Last year the House and the Senate
7 reached an agreement on the bill which had two elements.

8 One was the research element which required various
9 agencies, coordinated by EPA, to conduct research on stratosphere
10 effects on health effects, on climate effects, and so forth.

11 The second part was a regulatory framework with various
12 findings which EPA would have to make and then proceed to
13 regulate if the evidence indicated the necessity for that.

14 Senators Domenici and Hart on the committee were particu-
15 larly interested in this provision. Since that time when the
16 conference bill failed, there has been some regulatory action
17 under existing law.

18 FDA has indicated their intent to propose regulations for
19 the aerosol spray cans which I think are the most famous threat
20 to the ozone layer. Also, the EPA under the new Toxic
21 Substances Act has indicated some extension to proceed through
22 regulatory process and if they make the findings to regulate
23 other kinds of spray cans;

24 Then on a longer time frame to address the air conditioning
25 units and various other sources of materials that could threaten

the ozone layer.

So there is some action going on. The staff met with EPA the other day to see how it is going and what of the things going on that the Senate bill and that the Conference bill contemplated.

One of the things that is a bit of a problem is the question of the long term need for this kind of research. These are problems that develop over decades.

EPA's research was funded by reprogramming money within the agency rather than an additional appropriation and without a specific resource authorization for this. They felt they were on kind of weak grounds for the long pull.

On the regulatory matter, it will be a matter of how to insure that there is a frame work needed but not to disrupt the present program.

So it would seem that the committee would have several options. One would be to simply drop the provision for the time being, assuming that the House would concur, in which case at a later time, perhaps a year from now, we could hold hearings and see if anything new is needed.

Another would be to split it and keep the research part, which would not disrupt regulation, and to drop the regulatory part and see how things are going.

The third would be to revise the regulatory part in order not to disrupt the initiatives, but to build upon them and

perhaps tie them together more coherently.

I think there would be about the three. You probably couldn't leave it unchanged. It would probably need some attention, but that might be fairly easy to resolve.

Senator Hart. Could you reeducate us on the state of the science? We were trying to resolve this last time around. There was a conflicting flurry of reports and scientific recommendations about the damage being done to the ozone layer.

I think part of the debate we had between Pete and myself was whether we should ban it and study it, or study it and then ban it.

(Laughter)

Senator Hart. Give them a fair trial and then hang them.

I think the question is what has transpired in the last year, and where are we now in terms of what the scientists say?

Mr. Whiteside. We have oscillated. The headlines on one day say the problem has gone away, and the next day a different scientist says it has not gone away.

The present oscillation is that it has not gone away. There is, however, this summer the NASA Stratospheric Research program should culminate in a rather definitive program by August or so.

Hopefully, we will be able to know what we are doing to the stratospheric layer. The effect that has on human health and also on crops, research is proceeding much more slowly, and

1 I think we will have to go on the basis of the assumption today
2 that for every one percent of ozone reduction you increase the
3 health effects by approximately twice that or two percent that
4 health effects are the various kinds of skin cancer, both the
5 fatal, which is less common, and the non-fatal, which is
6 relatively common.

7 Also, the crop effects which are relatively poorly docu-
8 mented but seem to be real in terms of less growth of soybeans,
9 corn, and these kinds of things.

10 So a lot more research before we really have much answer on
11 that, but we expect the answer on the depletion by August that
12 would be quite definitive.

13 That would be in time, incidentally, for the present
14 planned regulatory schedule which would be by the end of the
15 year to propose regulations and get them in place probably by
16 the first of 1978.

17 Senator Hart. Senator Moynihan looks agitated, a condi-
18 tion which we cannot have.

19 Senator Moynihan. Mr. Chairman, I just don't believe it.

20 (Laughter)

21 Senator Moynihan. I don't believe anybody has monitoring
22 devices that can record changes. You are speaking of skin
23 cancer effect in a sample of the 4 billion people in the world,
24 controlled stratified, all the -- I don't believe it.

25 (Laughter)

1 Mr. Whitewide. A lot of people don't believe statistics.
2 Senator Moynihan. I believe statistics. I am pretty
3 good at them, as a matter of fact.

4 Senator Hart. I think we can make some reports available
5 which raise scientifically the question.

6 Senator Moynihan. This would be extraordinary to me,
7 that relatively recent in the range of the last -- it is only
8 about 40 years that there has been enough emissions of any
9 kind to show any atmospheric consequences and just began to be
10 perceived.

11 It is only in the last 30 years that you get large scale
12 emissions and the notion that the atmosphere is sensitive
13 enough to variations and this can affect the growth of soybeans,
14 that is a new idea to me.

15 I don't dispute it, but I am skeptical of it.

16 Senator Domenici. Mr. Chairman, I might say I have worked
17 on it pretty long and your skepticism, even if it is not based
18 on so-called current reports, I believe it will be thereafter
19 you read them.

20 Let me ask a couple of questions.

21 Senator Moynihan. Could I interject, Senator? I taught
22 at a fairly distinguished university where I learned a lot
23 about this subject. On a random basis, every other professor
24 would tell you the world is going to freeze owing to the
25 increase of particulate and then the alternate professor will

1 tell you no, it is going to be good.

2 so you can learn a lot at a university.

3 (Laughter)

4 Senator Domenici. Let me ask you a couple of questions.

5 Can you get us the present proposed regulatory scheme by what-
6 ever agencies intend to exert jurisdiction and also which
7 agencies intend to, and over what?

8 I think we, Mr. Chairman, have at least a decision to
9 make as to whether we want to decide as a Congress to focus in
10 jurisdiction in this area in one place.

11 The agencies that are picking it up have varying kinds
12 of charters and we really have left it for them to pick or
13 choose.

14 I think one issue we ought to decide before we go to the
15 floor is do we want to say there is an agency in the Federal
16 Government that has control over this so we know one will be
17 doing it rather than two or maybe three.

18 Secondly, there is no question that if we have jurisdic-
19 tion and I will ask you this question, do we have jurisdiction
20 over the R&D thrust that is in our original bill, or does it
21 go to some other committee?

22 Mr. Cummings. I think we have complete jurisdiction over
23 environmental research and development.

24 Senator Domenici. Then there is no question in my mind
25 that the minimum thing we should do is put in this bill a major

1 And effort. The world's thrust at P&S and the atmosphere is
2 just miserable compared to the state of scientific technology
3 and we had at least a thrust and a converted thrust in the bill
4 with some money and we need to pursue that with, as I see it,
5 at least as vigorous as was in the bill, maybe even more so.

6 That should include studying other particles besides the
7 ones that come out of this aerosol because there is a long term
8 speculation that the NO_x that comes from fertilizer and all the
9 other things have a very serious impact, and somebody has to be
10 working on that.

11 Senator Hart. I would say that it is a problem about
12 which some serious scientists are seriously concerned and there
13 may be analogy to nuclear war in the sense that we really don't
14 know how many people would be killed by nuclear war, but we
15 don't think it is necessary to try it to find out.

16 If what one has to give up is hair spray or at least a form
17 of hair spray and Deodorant, to protect against skin cancer, it
18 may be worth the price. But anyway, we will come back to this.

19 Mr. Billings. Mr. Chairman, the next item is "Heavy-duty
20 Vehicles and Motorcycles."

21 The provision last year mandated the development of
22 emission standards for heavy-duty vehicles and for motorcycles
23 for model years 1979 and 1980.

24 There have been in the interim the development of
25 standards for motorcycles; there have been in the interim a

revision of the weight differential between a light-duty vehicle and a heavy-duty vehicle.

There is some question as to whether there is any need for changes in the Senate provision, especially in light of the fact that the House will have quite a different provision and we will probably end up the same place we did in conference the last time around.

If the members want to get into detail in this provision, the staff is prepared to discuss it.

Senator Hart. This, for my part, may be an area where I want to float the possibility of a noncompliance penalty on the grounds that this is a production area where costs of the industry is most sensitive, I think at least they can measure costs better than they can in the light-duty vehicles.

I may want to float that at that time.

Mr. Billings. The next three sections are relatively noncontroversial, relating to auto emission standards. Shall we pass over that?

(Laughter)

Senator Hart. Sure I, you guessed, let's not.

Mr. Billings. I have nothing to say about auto emission standards, Mr. Chairman.

Senator Hart. I think you will think of something.

Mr. Billings. Well, okay.

As the chairman knows, this is an area in which the staff

has always endured with a great deal of trepidation.

Senator Domenici: And you have never had anything to say about it.

Mr. Billings: That is right, not anything we couldn't get on a one-page memo.

Senator Hart: Could I ask a question about the print we are working from? Why, on page 20, do we have Sections 17 through 23 labeled "Heavy-duty Vehicles and Motorcycles"?

Seventeen and 23; 21, I am just floundering around here.

Mr. Brayman: They are both at 17, Mr. Chairman.

Mr. Billings: Section 23 was the useful life of motorcycle provision, which said, as you will recall, there was some discussion of whether we should try to decide useful life of motorcycles, and the committee decided that the Administrator should decide the useful life of motorcycles, and established authority for him to so do.

Senator Hart: You still have a print problem here.

Mr. Yago: It seems to be mislabeled, Leon.

Senator Hart: You had Section 21, nitrogen oxide research objective.

Mr. Brayman: Mr. Chairman, at the middle part of 21, you get sections 18, 19 and 20.

Senator Hart: I see.

Mr. Billings: The historical situation is that the 1975 Conference Report provided, and the Senate passed bill, and the

House Bill -- provided that the auto companies would have to meet in 1979 the same standards which were applicable to 1977 model motor vehicles.

In the absence of that change, the statutory standards established in 1970, in the 1970 Clean Air Act, would be applicable to cars produced in 1978.

There is little, if any, question but that the industry cannot comply in 1978 with those statutory standards. There was little, if any, question last year for whatever reason that the industry could not meet the 1978 standards in 1978.

So both committees and the conference agreed that 1978 should be the same as 1977. The Senate bill proposed two additional things: First -- or, three -- that the long term NO_x standards, standards for oxides of nitrogen be relaxed from .4 grams per mile to .10 grams per mile;

Second, that that standard be established for all motor vehicles in 1980;

Third, that in 1979 all cars produced in the United States, sold in the United States, meet the statutory hydrocarbon and carbon monoxide standards, and that they meet the current oxides of nitrogen standard of 2.0 grams per mile, going to 1.0 in 1980, but also requiring that a 10 percent of vehicles produced in 1979 meet the 1.0 grams per mile oxides of nitrogen standard in order to provide a test bed against which to judge the potentialities of new technology.

1 The Conference Report closely tracked the Senate bill.
2 It did agree on the establishment of the statutory hydrocarbons
3 and CO standards in 1975.

4 It did agree that in 1975 the oxides of nitrogen standards
5 should be 2.0 grams per mile. It did agree, it departed with
6 respect to 1980 in maintaining that 2.0 grams per mile NO_x
7 standard into 1980 and thus setting the statutory NO_x standard
8 at 1.0 in 1981 and thereafter.

9 That is where the matter stands.

10 Senator Hart. Can you account for some of the testimony
11 we got encouraging us to relax carbon monoxide standards which
12 I don't recall being an issue in the last couple of years?

13 Where does that come from? What we found out in Denver
14 is carbon monoxide is becoming a bigger problem instead of a
15 lesser problem.

16 Mr. Billings. The discussion involving relaxation of the
17 CO standard does not now come from judgments as to health
18 effects, and so on. There has been a continuing discussion
19 over the past four or five years as to whether or not the
20 statutory carbon monoxide standard was necessary to achieve
21 health levels of carbon monoxide nationwide.

22 The National Academy of Sciences in fact suggested the
23 current carbon monoxide standard of 15 grams per mile would be
24 adequate to achieve health standards by 1990.

25 That study assumed that 5 grams per mile would be the

1 maximum waterborne fine cars and not some deteriorated
2 level higher than that.

3 What has happened is as we understood it and in the process
4 of experimentation with three-way catalyst systems the auto
5 companies are finding that the stringency of the carbon monoxide
6 standard is restricting their ability to get the kind of
7 performance they want with respect to hydrocarbons and oxides
8 of nitrogen.

9 It has to do with when they are in what they call the
10 reducing phase which relates to NO_x and as a result -- I am
11 getting in deep -- as I understand it, they have to put yet
12 another catalyst behind the three-way catalyst to clean up the
13 CO if they are going to get to 3.4 grams per mile.

14 Senator Hart. That is the reverse or it is a correlary
15 of the argument they have been making about NO_x , which is to
16 say they couldn't achieve hydrocarbon and carbon monoxide
17 control because of the NO_x standard.

18 We can play that game all day long. Pretty soon it is
19 going to be hydrocarbons.

20 Mr. Billings. I hope the chairman understands I am only
21 reporting.

22 Senator Hart. I understand.

23 Mr. Brayman. Mr. Chairman, the industry's point is they
24 have to use more oxygen to reach what they call stoichiometric
25 where you have the perfect aeroxuel ratio to operate the

three-way catalyst properly.

Using more oxygen, therefore, produces more carbon monoxide. Therefore, they have to clean up more carbon monoxide than they would with the current oxidation catalyst.

They argue that the standard should be relaxed to 9 grams per mile or 15 grams per mile. They base their argument on the so-called 300-day study, which was done by, I guess, EPA and DOT, and some other Federal agencies, that supposedly came to the conclusion that relaxing the standard to 9 grams per mile would have no adverse impact on health.

You would attain the health standard in every community in the country by 1990.

Senator Hart. Does that presume no deterioration of performance?

Mr. Brayman. That is the catch. They presume that you will get no more deterioration over the life of the vehicle, 100-plus thousand mile of the vehicle than you get initially.

Senator Hart. What car is that?

Mr. Billings. It is important to note at least according to one of the companies, the air is statistically clean in the United States today on the basis of certification data.

Senator Hart. All I have heard for two years is they have to relax the NO_x standard so they can achieve the other two. Now you are saying we have got to relax the carbon monoxide to achieve the NO_x standard, the relaxed NO_x standard.

ad 30 1 Mr. Billings. That may be the way they are saying it, but
2 we can take some solace in the fact that most of the companies
3 accept the fact that the .4 hydrocarbon standard is necessary
4 to get rid of smog.

5 Mr. Brayman. I think their main point is not that they
6 technically cannot make the 3.4, but they would have to put on
7 the follow-up cleanup catalyst, an oxidation catalyst after the
8 three-way catalyst.

9 This would cost more and that they would prefer not to do
10 this. They justify that on the position that supposedly there
11 will be no adverse health effect.

12 Mr. Billings. We quickly add that there is evidence to
13 indicate that that is not the case. The Volvo experience
14 suggests you can -- remembering and all of the caveats that
15 go in the fact that the Volvo is a four-cylinder engine,
16 electronic fuel metering system, whatever -- the Volvo
17 experience is they can meet both the hydrocarbon and carbon
18 monoxide and the NOx standard and diesel engines have no
19 difficulty with the CO standard.

20 Senator Hart. Is this a new development?

21 Mr. Brayman. It is new in the last several weeks, yes,
22 sir. We have not heard about it before just prior to the
23 hearings, as I recall.

24 Senator Domenici. What did the United Auto Workers say
25 about relaxing the CO standard as it applied to California?

1 Didn't they say California found something about that health-
2 subject?

3 Mr. Billings. The State of California problem is perceived
4 by the California regulators as a photochemical oxidant problem,
5 where carbon monoxide is a problem in the canyons of New York
6 City and in Denver and some other places, it is not perceived
7 to be the auto emission related air pollution problem in
8 California.

9 Therefore, California has let their carbon monoxide
10 standard float in 9 grams per mile. California has made some
11 other interesting changes so they could keep their standard
12 stricter, too.

13 Senator Hart. Suffice it to say, this will be a matter
14 of discussion.

15 Senator Gravel. That is a very observing statement.

16 Senator Hart. I guess unless anyone else wants to put an
17 oar in, we can move on.

18 Mr. Billings. Section 21 is the oxides of nitrogen
19 research objective.

20 Senator Hart. Just hang on a second. I think the oar
21 that wants to put in is high altitude emissions.

22 Senator Domenici. Right. As I recall, the high altitude
23 emission situation is not addressed in the Senate bill but is
24 addressed to some extent either in the House bill or in the
25 report on the conference agreed upon bill. Is that correct?

1 Mr. Bradshaw: That deals only with model year 1977 and
2 earlier. In other words, it is up to the time that EPA issued
3 issued its high altitude regulations which were model year 1977.
4 It doesn't deal with the issue that is of major concern to the
5 auto dealers now.

6 Senator Domenici: I want to keep alive the issue of the
7 Senate addressing the high altitude situation. I don't have a
8 clear picture of what I want to propose, but both Senator Hart
9 and I and a number of Senators have the problem.

10 Basically, what is happening is that the major American
11 automobile manufacturers are not producing cars in compliance
12 but rather cutting substantially the options of the automobiles
13 dealers and thus the people in the high altitude areas and I
14 have serious question since it is so difficult to enforce.

15 Right down the road you can buy them. The only penalty
16 we can impose is that if the dealer sells it to someone, knowing
17 he is taking it to a high altitude area, he is in violation.
18 I have serious doubts as to the impact on cleaning up the air
19 of continuing that.

20 I want to arrive at a point in time when all the cars are
21 certified for high altitude. I don't know whether that is a
22 year or two years from now, Gary, but my present thinking is
23 we ought to suspend them because they are not of that much
24 impact on clean air and they are working an extremely hardship
25 on high altitude constituents and automobile dealers and want

of the stories are really gross.

You have a small community that is high altitude. They just go across the border and buy all the cars there. I don't want to see that continue unless there is some real evidence that to modify that would have a serious impact. I will bring that issue up.

Mr. Billings. After the agenda is an item on that.

Senator Hart. I share the concern exactly, but reaching an opposite conclusion, and our record that we made in Denver was that the automobile pollution is the problem, automobile emissions are the problem. I think you and I might be able to talk about it to see if we can come up with something.

I think that is a separate discussion that Senator Domenici and I can hold by ourselves without disturbing everyone else.

Mr. Braithwaite. Senator McClure also has something on that.

Mr. Billings. Section 21 is the oxide of nitrogen research objective. The purpose of this section is to maintain as an objective of auto emission control the .4 grams per mile standard of oxides of nitrogen.

The Section 22 is a National Academy of Sciences Study.

Senator Hart. Before you move to that, what impact does the California certification of Volvo have on Section 21?

What difference is that going to make if what we are proposing is a research objective and somebody has already

1 controlled? Is it already research?

2 Mr. Billings. I suppose the argument would be made.

3 Senator, that the Volvo is a technology, at least the industry
4 has made the argument that the Volvo is a technology that is
5 applicable to that kind of car and that kind of circumstance
6 and whether that is a uniformly applicable technology, whether
7 the options are applicable among the sizes, ranges, styles,
8 drive trains, vehicles across the board is still to be deter-
9 mined.

10 Senator Hart. Therefore, this section is needed to do
11 what?

12 Mr. Billings. Theoretically, to prove out the application
13 of technology to the broader range of the issues.

14 Senator Hart. But not that the technology exists?

15 Mr. Billings. Not that the technology exists.

16 Section 22 is the requirement to reinstitute and maintain
17 the committee on motor vehicle emissions, National Academy of
18 Sciences, for the purpose of continuing to update the Congress
19 and the Administration on the state of the art of auto emission
20 controls.

21 The purpose for including that last year, the purpose
22 probably still holds to a greater or lesser extent, is that
23 the Congress needs an independent assessment of the techno-
24 logical availability and implications in the event that at some
25 later date, between now and the time the statutory standards

1 were applied, there is an assertion as to the impossibility
2 of the "impossibility" of those standards.

3 Senator Hart. Impossibility?

4 Mr. Billings. I just made that word up.

5 Senator Hart. That is a new section, right?

6 Mr. Billings. Section 24 extends to non-dealer repair
7 shops, the prohibition against tampering, the effect of which
8 is to interfere with the emission performance of vehicles.

9 Under current law only motor vehicle manufacturers and
10 dealers are prohibited from tampering with cars. This would
11 take the tampering provision applicable to everybody but
12 individuals who tamper with their own cars.

13 It also would reduce the fine with respect to independent
14 to \$2,500.

15 Senator Hart. How did the Conference Report deal with
16 this? This got back into the high altitude problem again, as I
17 recall, and there was some language put in on the House side
18 with regard to dealers and repair shops in the high altitude
19 areas.

20 Mr. Billings. The Conference Report said if you were
21 adjusting the car for high altitude controls, it wasn't
22 tampering.

23 Senator Hart. Is that what this section will say also?

24 Mr. Billings. Not unless it is amended.

25 Sections 25, 27, 28, 29 and 30 and 40 all relate to the

so-called after market issues, the question of the extent to which the so-called performance warranty applicable to motor vehicles creates a competitive disadvantage for independent repair shops and independent producers of after market parts.

I suspect it is fairly complex and lengthy discussion, and I suspect that there is likely an amendment will be offered on this and it may be better to defer.

Senator Hart. Let me say for Senator Anderson and Senator Chafee that this was a matter of considerable discussion last year, having to do with the length of warranties, both in terms of mileage and time and the economic impact on the independent repair community, whether the duration of the warranty would force or result in lessened competition for the after market for repair and maintenance of automobiles.

It was a matter of considerable debate and I think Leon is right. We will be coming back to it and get into probably a rehash of the same arguments both ways.

Senator Chafee. Could I ask one question? On the tampering, as I just quickly scanned this, there is no prohibition against the individual tampering. Is that correct?

Mr. Billings. That is correct.

Senator Chafee. Did you fuss with that to any extent? Suppose somebody makes a business of, not just the individual, but a manufacturer or an individual comes out with a publication on how to tamper and he becomes the expert on tampering and

37 shared his knowledge with the world at large.

Senator Hart. Like writing your own will.

(Laughter)

Senator Chafee. Yes. Is that all right?

Mr. Cummings. It would not be covered by this amendment or existing law. If you are talking about somebody who is not a manufacturer or dealer.

Senator Chafee. Some enterprising person.

Mr. Cummings. Publish in Popular Science, or something like that.

Senator Chafee. That is one step, but maybe that gets into too complicated a problem. But how about the individual who drives a car; that is, these devices are unhooked and aren't we defeating?

Mr. Billings. Senator, about the only way that we perceive that you could get at that problem is through having an adequate inspection and maintenance program.

Mr. Cummings. Rather than using criminal sanctions, using the inspection and certification approach in order to have titling, license, whatever, you have to keep your car in adequate shape.

That kind of program might pick up equipment as well as tampering with the equipment.

Mr. Brayman. In the 1970 Act, there was a prohibition against the manufacturer or his dealer doing the tampering.

ec 16 1 Because of that a lot of after market parts shops opened up
2 the business of tampering and reworking the devices.

3 This extends it two-thirds of the way so all you have out
4 is the -- it gets over that problem that has existed for the
5 last six years.

6 Senator Eaker. I am interested in the question myself.
7 Did we ever address the question of the problem of the individual?

8 Mr. Billings. Yes. We addressed it and the members
9 agreed, if my recollection is correct, that it was legislating
10 a fundamentally unenforceable requirement.

11 The next section is the production line test. There is
12 considerable discussion of the so-called selecting enforcement
13 audit and its relationship to the production line test.

14 The production line test issue arises on the question of
15 relationship between vehicles which are certified to meet
16 standards, so-called prototype vehicles versus vehicles which
17 are actually produced on the assembly line and whether or not
18 they meet the same standards to which they were originally
19 certified.

20 The EPA has implemented in large part because of the
21 existence of this provision in the bill a selective enforcement
22 audit which is already captured, if you would, production of
23 vehicles which were not in compliance with the certified
24 standard.

25 The limitation on this particular section is the date on

1 which the production line test would have to be in effect and
2 the question of its relationship to the selective enforcement
3 audit.

4 But it is not likely that the effect of the standards,
5 certification of standards are going to really be under on
6 production line vehicles until there is developed a test for
7 each and every car coming off the production line to establish
8 its relationship to those standards.

9 Senator Hart. Any questions?

10 Mr. Billings. The next section "Preemption" was a part
11 of the overall auto emission compromise last year, which
12 provided that any State that was subject to a restriction
13 relative to transportation controls could adopt at an earlier
14 State the statutory standards for light-duty motor vehicles.

15 That would have to be considered in the overall decision
16 of what the committee does with auto emission standards.

17 Senator Hart. Can I break in to discuss how we should
18 best wrap this up? Could you give us an estimate on how much
19 more time we are going to need? Is there anything there we are
20 going to have to really --

21 Mr. Billings. I would say 10 minutes we could get through
22 all of it. I don't think there is anything of significance
23 here. In fact, Mr. Chairman, the issue of definitions, whether
24 there is controversy, relates back to other questions in the
25 bill.

1 Senator Hart. Why don't you proceed with all deliberate
2 speed and we will get it done by 12:30 and if anybody has to go
3 before then, they may.

4 Senator Chafee. What is the general timetable for the
5 next step? Do you know?

6 Mr. Billings. Tomorrow morning.

7 Mr. Yago. The committee is scheduled to meet at 9 o'clock
8 tomorrow morning to resume consideration of the Public Works
9 Employment Act and at or about 10:30 move into this subject
10 again.

11 Senator Moynihan. Mr. Chairman, may I say that I hope it
12 will be 10:30 because tomorrow morning we will have to
13 reconsider the amendment of Senator Heinz, and I think we can
14 dispose of that quickly or otherwise.

15 (Laughter)

16 Senator Moynihan. Thank you.

17 Senator Hart. There are only two ways of disposing of
18 amendments quickly or otherwise. So at 10:30 we would begin
19 actual mark-up itself.

20 Mr. Yago. That is the schedule.

21 Mr. Billings. The tentative schedule of the subcommittee,
22 Senator Chafee, is to try to resolve the issues in the Clean
23 Air Act to the extent possible by the close of meeting on
24 Wednesdays. That may be highly optimistic. But that is the
25 tentative schedule.

1 Senator Hart. That would involve sessions tomorrow
2 morning and Wednesday morning, two sessions, but none in the
3 afternoon.

4 Mr. Billings. No decision as to afternoon. It has just
5 been on the progress of the committee.

6 Senator Hart. Your goal is Wednesday.

7 Mr. Billings. These are full committee mark-ups, not
8 subcommittee; the full committee resolution.

9 Section 32 is a study of sulfur emissions. The only
10 change would be the deadline for it; the section on railroad
11 and locomotive emission standards is a provision for the
12 establishment of national standards for locomotives, based on
13 best available technology and the only controversy with that
14 provision was relative to preemption, but the committee
15 adopted preemption as a condition subsequent to the establish-
16 ment of standards.

17 The issues and definitions, as I said before, to the extent
18 there is any controversy will come up with respect to the
19 application of those definitions to provisions like prevention
20 of significant deterioration.

21 There, the question will relate to the definition of major
22 emitting facility and the definition of base line air quality.

23 Citizen suits. The committee voted last year to modify
24 the citizen suit provision to provide that the citizen suits
25 extended not only to emission limitations but other requirements.

AC 42 1 other enforceable requirements.

2 cost of litigation. That probably is one somewhat hope
3 controversial. This is the so-called deep-pocketing amendment
4 of Senator Buckley, which says that any party who prevails
5 against the United States shall be able to recover reasonable
6 costs for such parties participation in such proceeding, includ-
7 ing reasonable attorney's fees, et cetera.

8 There has been some considerable question raised about
9 that provision.

10 The employee protection provision in the Senate bill --
11 Senator Hart. Is the staff aware of a member that intends
12 to raise that, make an issue of it?

13 Mr. Billings. None.

14 Senator Gravel. There is a possibility that I will have
15 one.

16 Mr. Billings. The employee protection provision is boiler
17 plate language. We have adopted it in the Water Pollution
18 Control Act, which provides that employees should not be
19 discriminated against for participating under this legislation
20 and also provides the authority for the Administrator to review
21 threats of shutdown with respect to the economic implications
22 for the company, and so on.

23 Senator Hart. What do you mean by employees being dis-
24 criminated against for participating in this section?

25 Mr. Billings. In this Act, of an employee who provides

information pollution from a process.

It is probably with respect to this provision where the amendment would lie on loss of pay.

Senator Hart. No. It is a separate problem. That is where plants shut down under the intermittent --

Mr. Billings. I know. But I think that is the place you put it in the bill.

The National Air Quality Commission, Senator Baker and Senator Randolph's proposal to have a comprehensive study of the implications various requirements under this Act and regulations.

Mr. Cummings. This also pertains to Senator Bentsen's amendment, which was accepted on the Senate floor.

Mr. Billings. Which is the Oxidant Study, photochemical oxidants, how it is formed, what the control studies are, and so on.

The authorizations, Senator Buckley proposed to a study of penalty for NO_x emissions. This recognizes the fact that emissions of oxides of nitrogen from stationary sources are going up at a very sharp degree, with no clear technological alternative to achieve the degree of reduction which will be required and Senator Buckley proposed a study of using emissions penalties as a means of forcing the technology in this area.

Senator Hart. What happened to that in conference?

Mr. Brayman. It was included in the National Air Quality

Commissioner, I believe, Mr. Chairman.

Mr. Billings. Submitted under the rubric of the proposed Commission on Air Quality.

Senator Hart. So we not do that in our bill, as a stylistic thing?

Mr. Mayhew. I think it is a question of who does it. The provision in your bill is the EPA run the study. I think at least last year they thought they were better able to handle that.

Mr. Braithwaite. One of the provisions was having it put in the regulatory language in the report, if possible, on the theory it was the regulatory agency that ought to do that.

Mr. Billings. Under the general savings provision.

Senator Hart. Any other comments?

Senator Gravel. No, thank you.

Mr. Billings. Mr. Chairman, is it the desire of the Chair that with respect to those areas in which my issues have been raised that the agenda tomorrow cover those areas in which there have been issues raised and any others which are identified by staff people for members, so we have somewhat shorter agenda and we don't have to cover the same ground in the morning?

Senator Hart. I would encourage you to do two things;

1. Compile a list of the so-called noncontroversial sections and circulate that to staff members so they can refer

1 the fact that four Senators have no objections, and to the
2 degree possible, at the staff level, reduce or expand that list
3 and reduce the number of questionable sections to the degree
4 possible so that we don't have to, for people who were not here
5 today, go over the whole thing again.

6 If you can achieve that, I think it will make our efforts
7 a lot easier.

8 Then my proposal tomorrow, subject to being overturned by
9 whomever wishes, would be just to go to the non- or to the
10 controversial or flagged sections, if that can be done.

11 Senator Gravel. That would be excellent.

12 Senator Hart. We will reconvene at 10:30.

13 (Whereupon, at 12:20 p.m., the committee recessed, to
14 reconvene at 10:30 a.m., Tuesday, February 22, 1977.)

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